

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Muneef Halawa	Team: Squad #7	CCRB Case #: 201805983	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 07/23/2018 10:20 PM	Location of Incident: Reon Avenue and Slosson Avenue	Precinct: 120	18 Mo. SOL 1/23/2020	EO SOL 1/23/2020	
Date/Time CV Reported Tue, 07/24/2018 1:16 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 07/24/2018 1:16 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Thomas Leonardo	02977	952984	122 PCT
2. POM Michael Gagliano	04617	938515	122 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Michael Gagliano	Force: Police Officer Michael Gagliano pointed his gun at § 87(2)(b)	
B.POM Thomas Leonardo	Force: Police Officer Thomas Leonardo pointed his gun at § 87(2)(b)	
C.POM Thomas Leonardo	Force: Police Officer Thomas Leonardo used force against § 87(2)(b)	
D.POM Michael Gagliano	Force: Police Officer Michael Gagliano used force against § 87(2)(b)	
E.POM Thomas Leonardo	Abuse: Police Officer Thomas Leonardo searched § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		

## Case Summary

§ 87(2)(b) filed this complaint via the CCRB's website on July 24, 2018.

On July 23, 2018, at approximately 10:20 PM § 87(2)(b) was alone in his vehicle, driving in Staten Island from his place of work to his home. § 87(2)(b) heard a siren behind him and pulled over at the intersection of Reon Avenue and Slossen Avenue in Staten Island. A marked NYPD vehicle came to a stop behind § 87(2)(b)'s vehicle. § 87(2)(b) then exited his vehicle.

PO Thomas Leonardo and PO Michael Gagliano of the 122<sup>nd</sup> Precinct exited the NYPD vehicle and approached § 87(2)(b) each with their gun drawn. Both officers allegedly pointed their guns at § 87(2)(b)'s chest (**Allegation A: Force,** § 87(2)(g) **Allegation B: Force,** § 87(2)(g) PO Leonardo and PO Gagliano then allegedly took hold of § 87(2)(b) and pushed him forcefully against his vehicle (**Allegation C: Force,** § 87(2)(g) **Allegation D: Force,** § 87(2)(g) The officers then placed § 87(2)(b) in handcuffs. PO Leonardo allegedly reached into § 87(2)(b)'s rear pants pocket, removed § 87(2)(b)'s wallet, and located § 87(2)(b)'s identification inside (**Allegation E: Abuse of Authority,** § 87(2)(g) The officers then lodged § 87(2)(b) in the rear of their vehicle.

PO Leonardo wrote § 87(2)(b) a summons for failure to wear a seatbelt. He then released § 87(2)(b) issued him the summons, and allowed him to depart. § 87(2)(b) was not arrested.

There is no video associated with this case.

## Findings and Recommendations

**Allegation A—Force: PO Thomas Leonardo pointed his gun at § 87(2)(b)**

**Allegation B—Force: PO Michael Gagliano pointed his gun at § 87(2)(b)**

§ 87(2)(b) (Board Review 01) stated that his vehicle bore a valid temporary license plate at the time of the incident. He stated that when the traffic light turned green at the intersection of Todt Hill Road and Westwood Avenue, the vehicle ahead of him did not move. As such, he drove around the vehicle. He then continued for several blocks before he heard a siren at the intersection of Reon Avenue and Slossen Avenue. He came to a stop immediately after he first heard the siren behind him. Further, he stated that an officer using the vehicle's loudspeaker ordered him to exit his vehicle. He complied. PO Leonardo and PO Gagliano then exited their vehicle and approached him with their guns drawn and pointed at his chest.

PO Leonardo (Board Review 02) and PO Gagliano (Board Review 03) each stated that they observed § 87(2)(b) commit several VTL violations (including driving at a high rate of speed and failure to wear a seatbelt) at the intersection of Todt Hill Road and Westwood Avenue in Staten Island, located five blocks south of the location of the vehicle stop. They also observed that his vehicle bore temporary license plates. PO Leonardo provided to the investigation a photograph of § 87(2)(b)'s temporary license plate, which was expired as of the date of the incident (Board Review 04). Both officers stated that PO Gagliano, the operator of their vehicle, activated their lights and sirens in order to stop § 87(2)(b)'s vehicle. However, § 87(2)(b)

drove for several blocks before he finally came to a stop. They also stated that when § 87(2)(b) pulled over, he immediately and spontaneously exited his vehicle and said, “I’m on the job.”

PO Leonardo took § 87(2)(b) s statement to mean that he might be armed. Because § 87(2)(b) had failed to come to a stop for several blocks, and because he believed that § 87(2)(b) might be armed, PO Leonardo drew his gun. He then approached § 87(2)(b) with his gun drawn. However, when he reached § 87(2)(b) he determined that § 87(2)(b) did not appear to pose any threat. As such, he holstered his gun. According to PO Leonardo, PO Gagliano’s gun remained holstered.

PO Gagliano added that before he and PO Leonardo exited their vehicle, he used the loudspeaker to order § 87(2)(b) numerous times to reenter his vehicle. However, § 87(2)(b) did not comply. PO Gagliano confirmed that PO Leonardo drew his gun but maintained that he never drew his own.

§ 87(2)(b) did not indicate to the CCRB that he had ever been a member of the NYPD. However, CCRB records reveal that he was a member of the NYPD from at least 1985 until 2002 (Board Review 05).

Note that the location listed on the summons which PO Leonardo ultimately issued to § 87(2)(b) is the intersection of Todt Hill Road and Westwood Avenue (Board Review 06).

According to NYPD Patrol Guide Procedure 221-01, an officer’s use of force must be reasonable given the circumstances (Board Review 07).

In *People v. Livigni* 88 A.D.2d 386 (1986), officers were justified in ordering an individual out of a vehicle at gunpoint because they observed an empty gun holster within the passenger compartment of the vehicle, which reasonably led them to believe that there might be a weapon within (Board Review 08).

§ 87(2)(b) admitted to driving around a vehicle at the intersection of Todt Hill Road and Westwood Avenue in Staten island, the same location where the officers stated that they initially attempted to stop § 87(2)(b) s vehicle, and the same location listed on the summons which PO Leonardo issued to § 87(2)(b) § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

**Allegation C—Force: PO Thomas Leonardo used force against § 87(2)(b)**

**Allegation D—Force: PO Michael Gagliano used force against § 87(2)(b)**

§ 87(2)(b) stated that after he exited his vehicle, PO Leonardo and PO Gagliano took hold of his arm and pushed him chest-first against his vehicle, at which time they placed him in handcuffs.

§ 87(2)(b) did not resist when the officers did so.

PO Leonardo and PO Gagliano stated that when § 87(2)(b) refused to provide identification, PO Gagliano asked him to turn around, and he complied. PO Gagliano placed § 87(2)(b) in handcuffs and PO Leonardo assisted. There was no struggle and the officers did not use force against § 87(2)(b). PO Leonardo and PO Gagliano each denied pushing § 87(2)(b) against his vehicle or seeing the other do so.

As noted, there is no video evidence associated with this case.

§ 87(2)(b), § 87(2)(g)

**Allegation E—Abuse of Authority: PO Thomas Leonardo searched § 87(2)(b)**

§ 87(2)(b) stated that after the officers placed him in handcuffs, PO Leonardo reached into his rear right-side pants pocket, removed his wallet, looked inside, and removed his driver license.

PO Leonardo stated that he repeatedly § 87(2)(b) for identification, § 87(2)(b) said that he would not provide identification to the officers. As such, the officers placed § 87(2)(b) in handcuffs. PO Leonardo did not consider § 87(2)(b) to be under arrest at this time. However, PO Leonardo stated that if § 87(2)(b) could not be satisfactorily identified on scene, the officers would have transported him to the stationhouse, where he would have been arrested for refusing to identify himself. As such, they would have searched him for weapons and contraband prior to lodging him in their vehicle. Ultimately, however, § 87(2)(b) told PO Leonardo that his identification was located within his wallet. PO Leonardo then obtained § 87(2)(b)'s wallet but denied reaching into § 87(2)(b)'s pants pocket. He did not remember how he obtained the wallet. He then located § 87(2)(b)'s identification within the wallet.

PO Gagliano also stated that § 87(2)(b) refused to provide identification, and that he and PO Leonardo placed him in handcuffs so that they could determine his identity in order to issue him a

summons. PO Gagliano also believed that the officers could have exercised discretion to place § 87(2)(b) under arrest for any of the observed traffic violations. PO Gagliano stated that PO Leonardo then obtained § 87(2)(b)'s identification, but he did not remember how PO Leonardo did so.

According to NYPD Patrol Guide Procedure 209-09, an officer issuing a summons must ask the violator for proof of identity and residence. If any there is any doubt as to the identity and/or residence of the violator, an officer is to remove the violator to the command for investigation (Board Review 09).

According to *People v. Gamble* 620 N.Y.S.2d 655, where a sufficient basis for a non-arrest detention exists – in that case, detention within a police vehicle in order to perform a show-up – an officer may conduct a frisk as a routine safety measure preliminary to lodging a suspect in a police vehicle (Board Review 10). However, *Gamble* makes no allowance for a search under these circumstances.

According to *People v. Reid* 24 N.Y.3d 615 (Board Review 11), independent of whether or not an officer has a legal basis on which to arrest an individual, the search of said individual is not justified as “incident to lawful arrest” if the officer does not actually intend to make an arrest at the time of the search. § 87(2)(b), § 87(2)(g)

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§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g), § 87(4-b)

§ 87(2)(b), § 87(2)(g), § 87(4-b)

§ 87(2)(b), § 87(2)(g), § 87(4-b)

§ 87(2)(b), § 87(2)(g), § 87(4-b)

### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 14).
- PO Leonardo has been a member of service for six years and has been a subject in four CCRB complaints and six allegations, one of which was substantiated (Board Review 15). § 87(2)(g)  
§ 87(2)(g)
  - 201706938 involved a substantiated allegation that PO Leonardo refused to provide an individual with his name and/or shield number. The Board recommended Command Discipline B and the NYPD has not yet imposed discipline.
- PO Gagliano has been a member of service for 13 years and has been a subject in three cases involving six allegations, none of which were substantiated (Board Review 16). PO § 87(2)(g)

### **Mediation, Civil and Criminal Histories**

- § 87(2)(b) declined to mediate this complaint.
- As of October 10, 2018, the New York City Office of the Comptroller has no record of a Notice of Claim being filed regarding this complaint (Board Review 17).
- § 87(2)(b)

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Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_

Signature	Print Title & Name	Date
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Squad Leader: \_\_\_\_\_

Signature	Print Title & Name	Date
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Reviewer: \_\_\_\_\_

Signature	Print Title & Name	Date
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